PATENT
Attorney Docket No. 11360.0148-00000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	
	)	
Ruth Marie TRITZ et al.	)	Group Art Unit: 3695
	)	
Application No.: 09/653,595	)	Examiner: Narayanswamy SUBRAMANIAN
	)	
Filed: August 31, 2000	)	Confirmation No.: 4590
	)	
For: METHOD AND APPARATUS FOR EVALUATING A FINANCIAL ACCOUNT APPLICANT	)	

Attention: Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

REPLY BRIEF UNDER 37 C.F.R. § 41.41

Pursuant to 37 C.F.R. § 41.41, this is a Reply Brief to the Examiner's Answer mailed August 4, 2010, which has a two-month period for reply extending through October 4, 2010. This Reply Brief addresses the new points set forth in the "Response to Argument" section of the Examiner's Answer.

A reply to the Examiner's Answer follows on the next page of this paper.

ARGUMENT

In response to the Appeal Brief filed May 17, 2010, the Examiner's Answer ("the Answer") maintained the rejection of claims 1-6, 9, 26-30, and 40 under 35 U.S.C. § 103(a), as being allegedly unpatentable over U.S. Patent 6,119,103 to Basch et al. ("*Basch*") in view of U.S. Patent 6,088,686 to Walker et al. ("*Walker*"). The Answer further maintained the rejection of claims 7, 8, 31, and 32 under 35 U.S.C. § 103(a), as being allegedly unpatentable over *Basch*, in view of *Walker*, and further in view of DePass StarTribune Reference Jan 29, 1998 ("*DePass*"). Appellants respectfully traverse these rejections for the reasons set forth in the Appeal Brief, and reply to the additional arguments set forth by the Examiner in the Answer.

In the Answer, the Examiner argues against Appellants' assertion that "credit bureau data is not input to the predictive model to generate a risk score," alleging that "[i]f credit bureau data is used in developing the predictive model it is **inherent** that it is also used in the scoring process" (emphasis added). Answer, at page 8. However, in support of this allegation, the Examiner merely cites portions of *Basch* that disclose a "[f]inancial risk prediction system (FRPS)" configured to receive credit bureau data and data from external public record stores. Id.

Even assuming the Examiner's allegations regarding the development of "predictive model" were accurate, the Examiner's assertion of inherency would still be incorrect. Not only do the cited portions of *Basch* fail to disclose or suggest any relationship between credit bureau data and the scoring process, but additional disclosure of *Basch* expressly contradicts the Examiner's asserted inherency between credit bureau data and the scoring process.

As set forth on pages 11 and 12 of the Appeal Brief, *Basch* explicitly teaches away from using credit bureau data as an input to the scoring process. For example, *Basch* contrasts "scoreable transactions" with data that "are updated only monthly per billing cycle," and teaches the use of the former rather than the latter in assessing financial risk. *Basch*, column 5, lines 21-29. According to *Basch*, "the use of scoreable transactions in assessing financial risk advantageously enables account issuers to timely receive financial risk scores based on events that impact financial risk[,] rather than on data which are updated only monthly or quarterly" (emphasis added). *Id.* Furthermore, *Basch* specifically defines "data kept by credit bureaus" as data "typically not updated . . . until after the end of each billing cycle (which may be, for example, monthly or quarterly)" (emphasis added). *Basch*, column 2, lines 20-24.

Therefore, *Basch* teaches: (1) "data kept by credit bureaus" is different than "scoreable transactions" and (2) "scoreable transactions" should be used rather than credit bureau data in "assessing financial risk." Thus, the Examiner's assertion that "it is inherent that [credit bureau data] is also used in the scoring process" is contradicted by at least this explicit disclosure of *Basch* (emphasis added). For at least these reasons, the Examiner's argument is unsupported by *Basch* and, in fact, is contradicted by explicit disclosure in *Basch*.

The Examiner further argues against Appellant's assertion that "there is nothing in *Basch* to suggest that a scoring variable is assigned to data and a point value is applied to each scoring variable to generate a score," alleging that that "*Basch* clearly teaches generating a score based scoring variable that is assigned to data and a point

value that is applied to each scoring variable" (emphasis added). Answer, at page 8. This is not correct.

The Examiner provides the following quote from the Appeal Brief as the sole evidence for this allegation:

> "The patterns (from 702, 706) are input to account-level scoring logic 712, 714 to generate account-level scores 716, 718. . . . Fig. 8 of *Basch* illustrates the technique for deriving the account-level scores 716, 718 in which the input elements (vectors from output 704, 710) are multiplied by a weight W and transformed using a transfer function in layers 808,810 to be output 820 as the desired score. . . . The patterns of output 704, 710 may be combined and input into consolidation logic 730 to derive account holder-level patterns, and the account holder-level score 734 may be generated by account holder-level scoring logic 732 in the same manner." Id.

However, nothing in the quoted portion of the Appeal Brief supports the Examiner's allegation.

In fact, the quoted portion of the Appeal Brief mentions neither "scoring variables" nor "characteristic variables," and the Examiner cites no additional section of *Basch* that that mentions either "scoring variables" or "characteristic variables." Therefore, even if "characteristic variables" of *Basch* are interpreted to include the claimed "scoring variables," as alleged by the Examiner on page 4 of the Answer, the quoted portion of the Appeal Brief cannot support the Examiner's statements with respect to the claimed "scoring variables." On this basis alone, the Examiner's argument should be rejected. Moreover, the quoted portion of the Appeal Brief is consistent with Appellants' position, as set forth on pages 12 and 13 of the Appeal Brief, that the Examiner's characterization of the "characteristic values" in *Basch* is not correct. For at least these reasons, the Examiner's argument is unsupported by *Basch*.

Further, in the Answer, the Examiner also argues against Appellant's assertion that "there is nothing in *Basch* to suggest [applying] a scaling equation to the first score to generate a final score for the applicant." Answer, at page 8. In support of this position, the Examiner alleges that *Basch*, in Figure 9 and in column 18, line 34 through column 19, line 10, discloses "the FRPS generating the characteristic variables (which are interpreted to include the first score) and weighting the characteristic variables by a weight W to generate a final score for the applicant" (emphasis added). Answer, at page 9. However, this is simply incorrect.

Basch at most discloses processes by which "input elements may multiply each input vector by a weight W and transform the vector using an appropriate transfer function to derive a state of the element" (emphases added). *Basch*, column 17, lines 52-55. However, *Basch* neither discloses nor suggests a "characteristic variable" in this context, much less "weighting the characteristic variables by a weight W," as alleged by the Examiner. In fact, *Basch* does not discuss "characteristic variables" until column 18, line 41, and does not mention the "weight W" in that discussion.

Furthermore, *Basch* explicitly teaches that the "states of the element[s]" obtained by "multiply[ing] each input vector by a weight W" are passed to a neural network for further processing. *See Basch*, column 17, lines 55-57. Therefore, the "states of the element[s]" disclosed in *Basch* are clearly not "a final score," as alleged by the Examiner. For at least these reasons, the Examiner's argument is unsupported by *Basch* and, in fact, is contradicted by explicit disclosure in *Basch*.

In the Answer, the Examiner further argues that *Walker* discloses "determining, by a computer, whether to open [a] financial account based on a comparison of a score

to a financial institution's pre-established policy rules and guidelines" (emphasis added). Answer, at pages 9 and 10. In support of this position, the Examiner appears to allege that a summary of "an applicant's credit bureau history, automated credit scoring, credit policies and the applicant's new or existing relationship with the financial institution," as disclosed in column 2, lines 15-21 of *Walker*, corresponds to the claimed "final score." However, this is not correct.

Walker discloses a system for processing credit applications in which "[c]redit qualification criteria (e.g., disaster screen, credit scores, etc.) . . . systematically evaluate an applicant's credit worthiness and then determine whether or not a 'credit qualified' marker will be displayed to a front end system" (emphasis added). *Walker*, column 11, line 65 through column 12, line 2. However, even assuming that the system of *Walker* could determine whether to open a new financial account, *Walker* would at most make such a determination based on criteria including a disaster screen and credit scores, but not based on any single score, as alleged by the Examiner in the Answer. For at least these reasons, the Examiner's argument is unsupported by *Walker*.

For at least these reasons, consistent with Appellants' position set forth in the Appeal Brief, Appellants respectfully dispute the Examiner's statement at page 10 of the Answer that "*Basch* in combination with *Walker* teaches all of the steps claimed in claims 1 and 9." In view of the mischaracterization of *Basch* and *Walker*, the scope and content of the prior art have not been properly determined, and the Examiner has not established a *prima facie* case of obviousness with respect to independent claims 1 and 9. The rejection under 35 U.S.C. § 103(a) should be reversed with respect to

independent claims 1 and 9, and with respect to dependent claims 2-6, 26-30, and 40 in view of their dependence from one of claims 1 and 9.

Claims 7 and 8 depend from independent claim 1, and claims 31 and 32 depend from independent claim 9. As conceded by the Examiner on page 11 of the Answer, *DePass* fails to cure any of the deficiencies of *Basch* and *Walker*. Therefore, for these reasons, and consistent with the position set forth in the Appeal Brief, Appellants respectfully dispute the Examiner's statement at page 11 of the Answer that "the combination of the disclosures of *Basch*, *Walker*, and *DePass* teaches all of the elements of claims 7-8 and 31-32." In view of the mischaracterization of *Basch*, *Walker*, and *DePass*, the scope and content of the prior art have not been properly determined, and the Examiner has not established a *prima facie* case of obviousness with respect to dependent claims 7, 8, 31, and 32. The rejection under 35 U.S.C. § 103(a) should be reversed with respect to claims 7, 8, 31, and 32.

CONCLUSION

For at least the foregoing reasons and the reasons given in the Appeal Brief filed on May 17, 2010, Appellants respectfully request that the Board reverse the final rejections of claims 1-9, 26-32, and 40.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this Reply Brief, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to Deposit Account No. 06-0916.

Respectfully submitted,

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GARRETT & DUNNER, L.L.P.

Dated: October 4, 2010

By: _____
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